

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 3657 OF 2019

Namdev s/o. Shivaji Gawali

....Applicant.

Versus

The State of Maharashtra & Anr.

....Respondents.

Mr. N.B. Narwade, Advocate for applicant.

Mr. R.B. Bagul, APP for respondent No. 1/State.

Mr. Yogesh Jadhav, Advocate for respondent No. 2 (appointed).

**CORAM : T.V. NALAWADE AND
M.G. SEWLIKAR, JJ.**

DATED : 07/12/2020.

ORDER : [PER T.V. NALAWADE, J.]

1. The application is filed for relief of quashing of R.C.C. No. 833/2019, presently pending in the Court of Judicial Magistrate, First Class, Ahmednagar. It is filed in C.R. No. 571/2019 of Bhingar Camp Police Station, Ahmednagar for the offences punishable under sections 354-A, 323, 504 and 506 of Indian Penal Code. Both the sides are heard.

2. Present crime was registered on the basis of report given by one Smt. Vaishali. Her husband is dead. It is her contention that in the year 2003 some portion of Survey No. 52 was purchased by them and it is in her name. It is her contention that she has started making construction on this portion and by the side of her portion there is

land of present applicant Namdev. It is her contention that the construction was going on under the supervision of her relative Vishal. The persons like Sham Berad and Dnyaneshwar Borude were engaged to do work of construction. It is the contention of informant that on 28.7.2019 at about 11.00 a.m. when the construction was going on and she was present at the site with daughter of her sister and Vishal and aforesaid two persons were working, present applicant came there and insisted that she should stop the construction work. It is contended that applicant said that he has 50% space in the plot in which construction was going on. It is her contention that when she said that the portion was converted to N.A. purpose and it belonged to her, the applicant held her hand, twisted it and he pulled *Sari* of informant. It is the contention of informant that due to act of the applicant, she felt molested and insulted. It is contended that threats were also given by the present applicant. Report was given on the same day and aforesaid crime came to be registered.

3. The learned counsel for applicant took this Court through a copy of litigation showing that against the family of informant Regular Civil Suit No. 710/2013 is filed in Ahmednagar Court and in that suit, first the order of status-quo was made on 18.4.2018 and then temporary injunction came to be granted on 9.7.2018. It is contended that by the order Civil Court had prevented the informant

and her family from making construction over the disputed space which was situated at the distance of 5 ft. from the common boundary. He submitted that in view of these circumstances, it was not open to the informant to make construction. He submitted that on the same day, severe beating was given to the present applicant by the relatives of the informant and report was given by him on the same day against those persons. Copy of F.I.R. is produced and it shows that the crime was registered for offences punishable under sections 324, 149, 504 and 506 of I.P.C. The learned counsel submitted that to give counter blast to the report given by applicant false report is given by the informant.

4. This Court has carefully gone through both the F.I.Rs. There is mention of dispute in the F.I.R. given by the applicant. His F.I.R. shows that at the relevant time the informant was present on the spot and quarrel was going on. Thus, both the sides gave reports against each other in respect of the same incident.

5. The police papers show that in support of the allegations made by the informant, there are statements of witnesses like Sham Berad and Dnyaneshwar Borude. There is the circumstance that both the sides gave report against each other and due to that circumstance and the record, this Court holds that it is not possible to presume that no incident happened as contended by informant.

This Court holds that no relief can be granted in favour of the applicant. So, the application stands dismissed. The fees of the counsel appointed for respondent No. 2 is quantified as Rs.4000/- and it is to be paid through High Court Legal Services Authority Sub Committee Aurangabad.

[M.G. SEWLIKAR, J.]

[T.V. NALAWADE, J.]

SSC/